

WORK DRAFT: ALASKA YOUTH ACCESS

Section 1. AS 11.76 is amended by adding a new section to read:

Section 11.76.130. *Definitions.*

For purposes of AS 11.76.100 -- 11.76.107, unless otherwise specified or unless the context requires otherwise,

(1) "person" has the meaning set forth in AS 11.81.900(41);

(2) "proof of age" means a driver's license or other documentary or written evidence that purports to establish that the person is 19 years of age or older;

(3) "tobacco product" means any product that contains tobacco and is intended for human consumption;

(4) "vending machine" means any mechanical, electric, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products.

Section 2. AS 11.76.100 is repealed and reenacted to read:

Section 11.76.100. *Selling or giving tobacco to a minor.*

(a) A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and negligently sells, exchanges, or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age.

(b) Selling or giving tobacco to a minor is a violation and upon conviction is punishable by a fine of not less than \$300.

(c) The court shall forward a record of each person convicted under this section who holds a business license endorsement under AS 43.70.075, or who is an employee or agent of a person who holds a license endorsement under AS 43.70.075, to the Department of Commerce and Economic Development.

Section 3. AS 11.76.105 is amended to read:

Section 11.76.105. *Possession OR PURCHASE of tobacco by a minor.*

(a) A person under 19 years of age may not knowingly possess, PURCHASE, OR ATTEMPT TO PURCHASE a cigarette, a cigar, tobacco, or a product containing tobacco in this state. A PERSON UNDER 19 YEARS OF AGE MAY NOT KNOWINGLY PRESENT OR OFFER TO ANY PERSON ANY PURPORTED PROOF OF AGE WHICH IS FALSE, FRAUDULENT, OR NOT ACTUALLY HIS OR HER

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OWN. FOR THE PURPOSE OF PURCHASING OR RECEIVING ANY TOBACCO
PRODUCT. This subsection does not apply to a person who is a prisoner at an adult
correction facility.

(b) Possession of PURCHASE OF, OR ATTEMPT TO PURCHASE tobacco
by a minor is a violation. PRESENTING OR OFFERING TO ANY PERSON ANY
PURPORTED PROOF OF AGE WHICH IS FALSE, FRAUDULENT, OR NOT
ACTUALLY HIS OR HER OWN, FOR THE PURPOSE OF PURCHASING OR
RECEIVING ANY TOBACCO PRODUCT, IS A VIOLATION.

Section 4. AS 11.76.107 is repealed and reenacted to read:

Sec. 11.76.107. *Restrictions on sale of tobacco and tobacco products.*

(a) A person may not sell or distribute tobacco products unless

(1)

(A) the person also holds a license issued under AS 43.70.075 or
AS 43.50.010;

(B) the sale or distribution occurs on the licensed premises; and

(C) the person purchasing or receiving the cigarettes, cigars,
tobacco, or tobacco products provides proof of age; or

(2) the sale or distribution is a wholesale transaction by a person
licensed as a manufacturer or distributor under AS 43.50.010; or

(3) the sale or distribution is a mail-order sale.

(b) Except as provided in this subsection, a person may not sell or distribute
tobacco products by vending machines. The sale or distribution of tobacco products
through a vending machine is permitted where the vending machine is located:

(1) In areas of factories, businesses, offices or other places that are not
open to the public;

(2) In places that are open to the public but to which persons under the
age of 19 years are denied access;

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(3) In places where alcoholic beverages are sold for consumption on the premises, but only if the vending machine (A) is under the continuous supervision of the owner or lessee of the premises or an employee thereof, and (B) is inaccessible to the public when the establishment is closed;

(4) In other places, but only if the machine (A) is under the continuous supervision of the owner or lessee of the premises or an employee thereof, (B) can be operated only by the activation of an electronic switch by the owner or lessee of the premises or an employee thereof prior to each purchase, and (C) is inaccessible to the public when the establishment is closed. In any place where supervision of a vending machine, or activation of an electronic switch, is required by this subsection, the person responsible for that supervision or the activation of the switch shall demand proof of age from a prospective purchaser if such person has reason to believe that the prospective purchaser is under 27 years of age.

(c) A person engaged in the sale or distribution of tobacco products shall demand proof of age from a prospective purchaser or recipient if such person has reason to believe that the prospective purchaser or recipient is under 27 years of age. No action for violation of this subsection shall be brought unless an action is also brought for violation of AS 11.76.100. *

(d) Every person engaged in the business of selling tobacco products at retail shall notify each individual employed by that person as a retail sales clerk that state law (1) prohibits the sale or distribution of tobacco products to any person under 19 years of age and the purchase or receipt of tobacco products by any person under 19 years of age, and (2) requires that proof of age be demanded from a prospective purchaser or recipient if the person engaged in sale or distribution of tobacco products has reason to believe that the prospective purchaser or recipient is under 27 years of age. This notice shall be provided before the individual commences work as a retail sales clerk, or, in the case of an individual employed as a retail sales clerk on the date when this subsection becomes effective, within 30 days of that date. The individual shall signify that he or she has received the notice required by this section by signing a form stating as follows: *

"I understand that state law prohibits the sale or distribution of tobacco products to persons under 19 years of age, and requires that proof of age be demanded from a prospective purchaser or recipient if I have reason to believe that the prospective purchaser or recipient is under 27 years of age. I promise, as a condition of my employment, to observe this law."

Each form signed by such individual shall indicate the date of signature. The employer shall retain the form signed by each individual employed as a retail sales clerk until 120

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days after the individual has left the employer's employ.

(e) Violation of this section is a violation and upon conviction is punishable by a fine of one hundred dollars (\$100) for the first offense within a two-year period, five hundred dollars (\$500) for the second offense within a two-year period, and suspension of the endorsement pursuant to AS 43.50.070 for a third and subsequent violations.

(f) The court shall forward to the Department of Commerce and Economic Development a record of each person convicted under this section.

Section 5. AS 28.15 is amended by adding new sections to read:

Section 28.15.195. *Administrative revocation of minor's license to drive for tobacco offense.*

(a) If a peace officer has probable cause to believe that a person who is not yet 19 years of age has possession of or has attempted to purchase tobacco products in violation of AS 11.76.105, the peace officer shall read a notice and deliver a copy to the person. The notice must advise that

(1) the department intends to revoke the person's license or permit, privilege to drive, or privilege to obtain a license or permit;

(2) the person has the right to administrative review of the revocation;

(3) If the person has a driver's license or permit, the notice itself is a temporary driver's license or permit that expires seven days after it is delivered to the person; and

(4) revocation of the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, takes effect seven days after delivery of the notice to the person unless the person, within seven days, requests an administrative review.

(b) After reading the notice under (a) of this section, the peace officer shall confiscate the person's driver's license or permit if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized.

(c) Unless a person has requested an administrative review, the department shall revoke the person's driver's license or permit, privileges to drive, or privilege to



VIA first PS 2/5
attach only on first 3

TRACEY SCOTT

TO DDM HOWE
RE: ALC DRAFT

BILL OK W/ ONE EXCEPTION
P. 5. Sub (d) line 16 -

license revocation
penalties too steep.

Recommend 90 day
suspension of license
for 1st offense, 6 mos
for 2nd offense in 1 yr,
1 yr suspension of
3rd offense w/in 1 yr,
Please send new draft
if other companies
agree.

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1 obtain a license or permit, effective seven days after delivery to the person of the notice
2 required under (a) of this section, upon receipt of a sworn report of a peace officer.

3
4 (1) that the officer had probable cause to believe that the person is not
5 yet 19 years of age and has possessed or attempted to purchase cigarettes, cigars, tobacco,
6 or tobacco products in violation of AS 11.76.105;

7
8 (2) that the peace officer has cited the person or arrested the person for
9 a violation of AS 11.76.105;

10
11 (3) that notice under (a) of this section was provided to the person; and

12
13 (4) describing the circumstances surrounding the violation of AS
14 11.76.105.

15
16 (d) The department shall impose the revocation required under this section for ^{days}
17 a period of ^{9 mos - 1st offense}
18 ^{warning for 1st,} (1) one year for a first violation; and ^{6 mos. for 2nd} 6 mos. for 2nd ^{6 mos - 2nd violation}

19
20
21 (2) two years for a second or subsequent violations. ^{1 YR. 3rd}

22
23 (e) A revocation imposed under this section shall be consecutive to a
24 revocation imposed under another provision of law, except that a revocation imposed
25 under this section shall be concurrent with a revocation imposed under AS 28.15.183 or
26 28.15.185 that is based on the same incident. A department hearing officer may grant
27 limited license privileges in accordance with the standards set out in AS 28.15.201 to a
28 person whose driver's license, permit, or privilege was revoked under this section.

29
30 (f) In this section, "peace officer" does not include a person employed by the
31 Department of Corrections.

32
33 Sec. 28.15.197. *Administrative review of revocation of license for tobacco offense.*

34
35 (a) A person who has received a notice under AS 28.15.195(a) may make a
36 written request for administrative review of the department's action. If the person's
37 driver's license or permit has not been previously surrendered to the department, it shall
38 be surrendered to the department at the time the request for review is made.

39
40 (b) A request for review of the department's revocation under AS 28.15.195
41 shall be made within seven days after receipt of the notice under AS 28.15.195 or the

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right to review is waived and the action of the department under AS 28.15.195(e) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license or permit and that the driver's license or permit has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.195(e) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section may be held telephonically at the discretion of the hearing officer.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. The hearing officer may

- (1) administer oaths and affirmations;
- (2) examine witnesses and take testimony;
- (3) receive relevant evidence;
- (4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
- (5) regulate the course and conduct of the hearing;
- (6) make a final ruling on the issue.

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(g) The hearing for review of a revocation by the department under AS 28.15.195 shall be limited to the issues of whether the person was not yet 19 years of age and whether the person possessed, purchased, or attempted to purchase cigarettes, cigars, tobacco, or tobacco products as prohibited by AS 11.76.105.

(h) The determination of the hearing officer may be based upon the sworn report of a peace officer, if the sworn report is supported by probable cause based on personal observations as required under AS 28.15.195(a). The peace officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. If in the course of the hearing it becomes apparent that the testimony of the peace officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing shall be continued to allow the attendance of the peace officer.

(i) Upon written request of the person requesting the hearing, the hearing officer shall stay the hearing until the conclusion of related criminal proceedings. Testimony given at the hearing is not admissible in a criminal trial unless the testimony given at the trial is inconsistent with testimony given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's revocation action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.

(l) Within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(m) The filing of an appeal under (l) of this section or a petition for review does not automatically stay the department's order or revocation. The court may grant a stay of the order or revocation under the applicable rules of court, after a motion and

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hearing and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed.

Sec. 6. AS 43.50.070 is amended to read:

Sec. 43.50.070. *Revocation AND SUSPENSION of licenses.*

The department may suspend or revoke a license issued under AS 43.50.010 -- 43.50.180(1) for a criminally negligent violation of AS 11.76.100 [~~11.76.107~~] or a violation of AS 43.50.010 -- 43.50.180 or a regulation of the department adopted under AS 43.50.010 -- 43.50.180; (2) if a licensee ceases to act in the capacity for which the license was issued; or (3) if a manufacturer, distributor, or wholesale distributor negligently sells tobacco or products containing tobacco to a nonlicensed retailer or a retailer whose license endorsement under AS 43.70.075 has been suspended. THE DEPARTMENT MAY SUSPEND OR REVOKE A LICENSE ISSUED UNDER AS 43.50.010-43.50.180 FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR A VIOLATION OF AS 11.76.107. A person whose license is suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. A disciplinary proceeding or action is not barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 -- 43.50.180. The department shall comply with the provision of AS 44.62 [~~the Administrative Procedure Act (AS 44.62)~~].

Sec. 7. AS 43.70.075(b) is amended to read:

(b) The department, upon payment of a fee of \$100 [~~\$25~~], shall issue a business license endorsement to a person who applies for a business license under this chapter, and may renew the endorsement issued under this subsection for a fee of \$100 [~~\$25~~]. The endorsement expires at the same time as the license to which it attaches.

Sec. 8. AS 43.70.075(d) is amended to read:

(d) If a person who holds an endorsement issued under this section, or an agent or an employee of a person who holds an endorsement issued under this section acting within the scope of the agency or employment, has been convicted of violating

(1) AS 11.76.100 [~~or 11.76.107~~] or violates a provision of this section or a regulation implementing this section adopted under AS 43.70.090, the department may suspend the endorsement for a period of not more than

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(A) ~~[(4)]~~ 43 days; or

(B) ~~[(2)]~~ 90 days, if within the past 24 months the person has been previously convicted of violating AS 11.76.100 ~~[or 11.76.107]~~ or a provision of this section or a regulation implementing this section adopted under AS 43.70.090~~[-]~~, OR

(2) AS 11.76.107 or violates a provision of this section, the department may suspend the endorsement for a period of not more than one year, if within the past 24 months the person has been convicted twice of violating AS 11.76.107.

Sec. 9. AS 47.12.030(b) is amended to read:

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession, PURCHASE, OR ATTEMPTED PURCHASE OF tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21; and

(5) AS 04.16.030, relating to possession, control, or consumption of alcohol.

Sec. 10. This Act takes effect July 1, 1997.